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October 13, 1994

FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
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Washington, D.C. 20554

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OCT 14 1994

FCC MAIL ROOM

PR 94-107

Re: Reply Comments on Behalf of Louisiana Public Service
Commission; PR File No. 94-SP5

Dear Sir:

Enclosed herein is an original and four (4) copies of Reply Comments, submitted on behalf of the Louisiana Public Service Commission, in response to Comments filed to the Petition on Behalf of Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, PR File No. 94-SP5. Also enclosed are copies addressed to individual Commissioners and offices within the FCC. One extra copy is enclosed, which I would like stamped and returned to me in the addressed, pre-paid envelope.

If any questions should arise related to these Reply Comments, please contact the undersigned counsel.

Very truly yours,

Wm. L. Geary, Jr.
William L. Geary, Jr.

Special Counsel to the
Louisiana Public Service Commission

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Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC MAIL ROOM

Petition on Behalf of the
Louisiana Public Service Commission
for Authority to Retain Existing Jurisdiction Over
Commercial Mobile Radio Services Offered
Within the State of Louisiana

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PR File No. 94-SP5

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Louisiana Public Service Commission

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**Petition on Behalf of the
Louisiana Public Service Commission
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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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OCT 14 1994
FCC MAIL ROOM

Petition on Behalf of the)	
Louisiana Public Service Commission)	
for Authority to Retain Existing Jurisdiction Over)	PR File No. 94-SP5
Commercial Mobile Radio Services Offered)	
Within the State of Louisiana)	

REPLY OF THE LOUISIANA PUBLIC SERVICE COMMISSION

I. INTRODUCTION

These Reply comments are respectfully submitted on behalf of the Louisiana Public Service Commission ("LPSC") to respond to comments filed by 15 parties to this proceeding. As set forth more fully below, the ability of the Louisiana Commission to continue exercising authority over the rates charged, services rendered and the setting of other terms and conditions for commercial mobile radio services ("CMRS") is necessary to ensure that competition may grow and to prevent Louisiana ratepayers from paying rates that are unjust and unreasonable, or rates that are unjustly or unreasonably discriminatory in an industry that is not yet competitive in Louisiana.

The LPSC filed its Petition For Authority To Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State Of Louisiana ("Petition") on August 8, 1994. Interested parties were supposed to file comments to the Petition on or before September 19, 1994.¹ The LPSC obtained an extension of time to reply to the comments until

¹ On October 4, 1994, Reply Comments were filed by PageMart, Inc. ("PageMart"), Rural Cellular Association ("RCA"), and AirTouch Paging ("AirTouch").

October 14, 1994. The LPSC submits this Reply Of The Louisiana Public Service Commission ("LPSC Reply") to respond to the following comments filed with the Federal Communications Commission (the "FCC" or "Commission") and served on the LPSC:

1. Radiofone, Inc. ("Radiofone")
2. BellSouth Corporation ("BellSouth")
3. McCaw Cellular Communications, Inc. ("McCaw")
4. GTE Service Corporation on behalf of GTE Mobilenet, Inc. and Contel Cellular, Inc. ("GTE")
5. Nextel Communications, Inc. ("Nextel")
6. Cellular Telecommunications Industry Association ("CTIA")
7. National Cellular Resellers Association ("NCRA")
8. Personal Communications Industry Association ("PCIA")
9. American Mobile Telecommunications Association, Inc. ("AMTA")
10. Century Cellunet, Inc. ("Century")
11. Mercury Cellular Telephone Company and MobileTel ("Mercury")
12. Mobile Telecommunication Technologies Corp. ("Mtel")
13. AirTouch Paging ("AirTouch")
14. Paging Network, Inc. ("PageNet")
15. E. F. Johnson Company ("E. F. Johnson")

Many of the comments set forth similar arguments, and a number of parties directly contradict the arguments made by other parties. Rather than address each comment individually, the LPSC Reply responds to the primary arguments set forth in the comments, and demonstrates why the LPSC should be permitted to retain its existing jurisdiction over CMRS providers.

II. THE LPSC SEEKS AUTHORITY TO RETAIN ITS EXISTING JURISDICTION OVER CMRS PROVIDERS IN LOUISIANA

Some parties have expressed confusion over whether the LPSC Petition requests new authority to regulate CMRS providers under 47 U.S.C. § 332(c)(3)(A) and 47 C.F.R. § 20.13(a) or requests extension of its existing authority under 47 U.S.C. § 332(c)(3)(B) and 47 C.F.R. § 20.13(b). (*See* Comments of PCIA at 13-16; and BellSouth at 12 n.10.) As stated

in the title of the LPSC Petition and in the Petition itself, the LPSC requests extension of its existing authority, under the provisions of 47 U.S.C. § 332(c)(3)(B) and 47 C.F.R. § 20.13(b). (Petition at 1-2.)

As we explained in the Petition, the LPSC has recently opened a docket to conduct a generic investigation to evaluate the merits of regulating cellular mobile carriers and other wireless communications providers on a rate of return or some other basis. The results of the investigation will also include recommendations concerning the type of regulation that should be exercised by the LPSC over such carriers. After that investigation is complete, and if the Commission denies our Petition, the LPSC may petition for authority to exercise rate regulation pursuant to 47 U.S.C. § 332(c)(3)(A)(i).

**III. CONGRESS, THE DEPARTMENT OF JUSTICE, AND THIS COMMISSION
HAVE EXPRESSED CONCERN THAT COMPETITIVE MARKET CONDITIONS
DO NOT EXIST IN EACH STATE**

Many parties assert that Congress, by enacting the 1993 amendments to the Communications Act of 1934 (the "Amendments"), has determined that the CMRS marketplace is competitive throughout the United States. (*See* Comments of CTIA at 4-5, McCaw at 2, GTE at 5-6, and BellSouth at 5-6.) That argument is contradicted by the explicit provisions of the Amendments, which allow state regulatory authorities to petition the Commission for continuation or commencement of regulation if "market conditions . . . fail to protect subscribers adequately from unjust and unreasonable rates . . ." 47 U.S.C. § 332(c)(3)(B)(i). The parties fail to and cannot explain why Congress would have mandated the provision that allows state commissions to petition for regulatory authority. There is no doubt that state commissions

would not have been allowed to petition for regulatory authority to regulate CMRS rates if Congress had determined that sufficient competition exists in all fifty states.

The Federal Communications Commission has also determined that significant anti-competitive problems may exist because of the duopoly that is present in cellular markets.

It found:

The fact that there are only two carriers raises the question of the extent to which these duopoly providers are able to reach an implicit or explicit agreement not to compete vigorously with one another and thus to elevate rates above their competitive levels. Standard principles of economics indicate that duopolists may be able to sustain what is in effect a shared monopoly -- with the attendant elevated prices -- either by tacitly agreeing not to price aggressively or by restricting the amount or rate of investment in new capacity.

(See Second Report & Order, In the Matter of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, ¶ 146, p. 60 (released March 7, 1994) ("Second Report & Order").)

In fact, the Commission has made an explicit finding that the cellular markets are not fully competitive. The Commission concluded:

In summary, the data and analyses in the record support a finding that there is some competition in the cellular services marketplace. There is insufficient evidence, however, to conclude that the cellular services marketplace is fully competitive.

(Second Report & Order at 1472.)

Finally, as referenced in the comments of the National Cellular Resellers Association, the Department of Justice reached similar conclusions less than three months ago. It found that: (1) cellular exchange markets are not competitive; (2) cellular duopolists have substantial market power; and (3) cellular carriers exercise bottleneck control over their licensed

facilities (*United States v. Western Electric*, Memorandum of the United States in Response to Bell Companies' Motion for Generic Wireless Waivers, Civ. Action No. 82-0192 (filed July 25, 1994) (DOJ)).

IV. LOUISIANA MARKET CONDITIONS FOR CMRS FAIL TO PROTECT SUBSCRIBERS ADEQUATELY FROM UNJUST AND UNREASONABLE RATES OR RATES THAT ARE UNJUSTLY OR UNREASONABLY DISCRIMINATORY

Louisiana subscribers have weathered successes and failures in this state's CMRS marketplace. It is interesting, albeit predictable, that many of the parties attribute the successes to "competition" and the failures to "regulation." For instance, McCaw and the CTIA claim that a broadening customer base indicates "competition" and "fair pricing." (McCaw at 21-23; CTIA at 12-13.) In fact, a broadening customer base may be the result of lower initial hardware costs for a subscriber -- which has nothing to do with CMRS rates. Even if rates decrease over time, thereby attracting more subscribers, there is no evidence that a newer lower rate is the result of fair pricing by a CMRS provider.

Congress set forth a specific test for granting state petitions to continue existing rate regulation of CMRS providers. The Commission shall grant such petition if a state demonstrates that market conditions with respect to CMRS services fails to protect subscribers from either: (1) unjust and unreasonable rates, or (2) rates that are unjustly or unreasonably discriminatory. 47 U.S.C. § 332(c)(3)(B)(i). Although a state must satisfy only one of the two conditions, the LPSC and other parties have presented ample evidence that both of the conditions exist in Louisiana.

A. Market Conditions Alone Fail To Protect Louisiana Subscribers From Unjust And Unreasonable Rates

1. Duopoly Rates In Louisiana Are Higher Than In Similar Jurisdictions

Dr. Richard P. Rozek, who submitted an affidavit for BellSouth, performed an econometric analysis of the prices charged by BellSouth for cellular service in two major cities in Louisiana, New Orleans and Baton Rouge, and compared the Louisiana prices with the prices charged by BellSouth in six comparable cities in other BellSouth states. Dr. Rozek stated that cities were matched based on population, income, and distribution of earnings by industry, to ameliorate the effects of these variables. (BellSouth affidavit of Rozek at 4.) Dr. Rozek described the test methodology and results as follows:

For all eight cities, we then obtained data from BellSouth on its lowest monthly rate for cellular service in 23 usage categories ranging from 10 minutes of use per month to 2,000 minutes of use per month. We compared the rates for Baton Rouge and New Orleans to the weighted average rates of their respective three city comparison group in each usage category. For Baton Rouge, the rate was higher than the three city average in all 23 usage categories. For New Orleans, the rate was higher in 22 of the 23 categories.

(BellSouth affidavit of Rozek at 4-5;
emphasis added.)

It is remarkable that cellular rates charged by BellSouth in the Louisiana markets are higher than the rates charged by the same carrier -- BellSouth -- in similar markets in other states. Of course, BellSouth attributes the disparity in rates to the existence of regulation in Louisiana, but offers absolutely no evidence of how regulation has increased the rates paid by Louisiana consumers.² BellSouth established no nexus between regulation and the higher rates

² It is interesting to note that BellSouth fails to proclaim that it will reduce rates in Louisiana in the absence of regulation by the LPSC. Moreover, BellSouth offers
(continued...)

it charges in Louisiana.³ It appears that market conditions have failed to protect subscribers from unjust and unreasonable rates. The fact remains that the evidence submitted by Dr. Rozek fulfills the burden cast on Louisiana in section 332 of the Communications Act -- rates in Baton Rouge are higher in all 23 usage categories, and rates in New Orleans are higher in 22 of 23 usage categories than in comparable non-Louisiana BellSouth cities.

2. Cellular Rates Charged In Louisiana Reveal The Existence Of Market Conditions That Fail To Protect Louisiana Subscribers From Unjust And Unreasonable Rates

BellSouth subsidiaries and Radiofone are the duopoly cellular providers in much of Louisiana. The BellSouth cellular providers are RBOC affiliates and international players in the cellular and CMRS market. Radiofone is a much smaller regional provider of cellular and CMRS services. The existence of unequal market power is demonstrated by the cellular rates charged in Louisiana, as discussed in this Section, and by the comments filed by BellSouth and Radiofone, discussed in the following Section IV(A)(3), in which Radiofone affirmatively requests continued regulation by the LPSC, ostensibly to protect it from BellSouth.

2(...continued)

absolutely no evidence that Louisiana rates are higher due to the cost of attorneys, consultants, tariff filings, or other factors related to regulation. Rather, higher rates may indicate that inadequate competition exists, that regulation has not been as effective as it should be in Louisiana, and that stricter regulation may be required. McCaw makes the same argument attributing increased costs to regulation but it also fails to offer any evidence in support of that proposition. Interestingly, McCaw admits that under this unwanted regulatory scheme in Louisiana "McCaw's Louisiana customers have seen prices drop 20 percent in the last two years alone." (Opposition of McCaw at 23.)

3 In fact, Dr. Bruce Owen, who filed an affidavit on behalf of McCaw, suggests that prices in a regulated environment would be below an efficient level. It would thus appear, according to Dr. Owen, that regulation may not be the controlling factor regarding higher prices in Louisiana. (McCaw Affidavit of Owen at 17.)

Dr. Rozek's affidavit submitted by BellSouth, when combined with publicly available information about competition in the non-Louisiana cities studied by him, strongly supports the conclusion that market conditions in Louisiana fail to protect subscribers from unjust and unreasonable rates. Dr. Rozek compared rates charged by BellSouth in Louisiana cities to rates charged by BellSouth in "comparable" cities. However, Dr. Rozek omitted one piece of information that is not only highly relevant to this analysis, but is the pivotal issue in this docket -- what are the market conditions in Louisiana *vis a vis* the other states considered.

For instance, the non-Louisiana cities studied by Dr. Rozek and found to be comparable to New Orleans include the BellSouth cities of Orlando, Florida; Jacksonville, Florida; and Indianapolis, Indiana. (BellSouth affidavit of Rozek at 4.) Dr. Rozek failed to disclose in his analysis the identity of the other major cellular provider in those cities -- in all three cities BellSouth competes head-to-head with McCaw Communications d/b/a Cellular-One! It is no surprise that cellular rates are lower in cities with two strong competitors than they are in comparable Louisiana cities with a strong competitor such as a BellSouth affiliate and a smaller competitor such as Radiofone. It is likely that market conditions, not regulation, fail to protect Louisiana subscribers from unjust and unreasonable higher rates than rates charged in comparable cities.

In addition to greater competition between duopolists of similar stature, the non-Louisiana cities have more competitors than do the comparable Louisiana cities. For instance, BellSouth and McCaw compete against GTE Mobilenet and Century Cellular in Indianapolis; against Cellular Dimensions in Orlando; and against Sun State Communications and Cellular

Systems in Jacksonville.⁴ The higher rates charged in Louisiana cities is almost certainly the result of inferior market conditions, as compared with the market conditions in the comparable non-Louisiana cities that contain at least two international cellular providers as well as other competitors. The inferior market conditions in Louisiana likely result in unjust and unreasonably high rates, and justify the continued regulation of CMRS providers in Louisiana by the LPSC.

3. The Comments Filed By BellSouth And Radiofone Reveal The Existence Of Unequal Market Power And Market Conditions That Fail To Protect Louisiana Subscribers From Unjust And Unreasonable Rates

Unequal market power in Louisiana is demonstrated by the fact that Radiofone urges this Commission to confirm the LPSC's pre-existing authority over cellular rates and services, which is in stark contrast to McCaw's and BellSouth's request that the LPSC exercise no authority over cellular matters in Louisiana. (Radiofone Comment at 3-4.)⁵ Moreover, Radiofone flatly states:

In sum, the CMRS market in Louisiana does not adequately protect subscribers from unreasonable or discriminatory rates and practices. The LPSC repeatedly has been called upon by subscribers, by carriers, and by the FCC, to resolve such market disruptions. In view of the Commission's stated intent to forebear regulation, Radiofone will be left without a forum for resolution of these matters.

4 It is unclear which competitors are primary service providers, and which are resellers or otherwise in competition for cellular services, as the FCC does not maintain information on resellers. This information was obtained from the Chamber of Commerce in the respective cities.

5 Charles Brown, the former Chairman of AT&T who oversaw its breakup, commented on recent activity in the communications industry: "It's funny how so many of the actors in this drama talk about the same goal but are pulling in different directions." *Fortune*, October 3, 1994, p. 98.

Radiofone submits that the LPSC has justified its retention of its existing regulatory authority over CMRS providers.⁶

(Radiofone Comment at 4; emphasis added.)

B. Market Conditions Alone Fail To Protect Louisiana Subscribers From Rates That Are Unjustly Or Unreasonably Discriminatory

In a duopoly market, why would one large provider request de-regulation while the other smaller provider requests continued regulation by the LPSC rather than straight competition? Radiofone, the smaller provider, is concerned that BellSouth, the larger provider, wields its market power in an anti-competitive manner to cause "unreasonable or discriminatory rates," and engages in other discriminatory practices.

The LPSC has an obligation to ensure both that ratepayers are protected, and that competition between utilities is conducted in a fair and evenhanded manner. For years the Commission has not only resolved disputes between cellular carriers, but also among the various interchange carriers and between those carriers and local exchange companies regarding competitive offerings. Continued regulation is required to protect both ratepayers and the smaller cellular carriers.

6 Although Radiofone agrees that the LPSC should retain its ratemaking authority and has satisfied the standards of section 332(c)(3) of the Communications Act, it argues that the LPSC should not be permitted to implement rate of return regulation to CMRS providers. As discussed above, the LPSC has just opened an investigation to determine what type of regulation is appropriate for CMRS providers. The docket is just beginning and no findings have yet been made. However, the LPSC must be free to implement what it believes to be an appropriate form of regulation based on the evidence in the record. Therefore, the LPSC should not be foreclosed from any particular type of regulation.

C. The Systems And Technology Are Not In Place In Louisiana To Provide Effective Competition To Cellular Providers

A number of parties assert that "oncoming competition" should be considered in a competitive assessment of the cellular marketplace. (See Comments of McCaw at 24-26, GTE at 15-16, and CTIA at 12-25.) The oncoming competition consists of technology such as Personal Communications System ("PCS"), Specialized Mobile Radio Service ("SMRS"), and Enhanced Specialized Mobile Radio Service ("ESMRS"). However, these technologies are not viable competitors to cellular service, particularly not in Louisiana. (See Comments of Nextel at 8-10.) Moreover, future competition does not solve the existing problem of current rates that are unjust, unreasonable, or unjustly or unreasonably discriminatory.

Determination of whether a CMRS service is a viable competitive service to cellular -- in other words, a substitute service -- involves an analysis of several factors. First, the service must be available in the market area and in the areas in which the subscriber is likely to travel. Second, the cost of entry (*i.e.*, the cost of the handset and signup and cancellation fees) must be similar to cellular. Third, the service rates must be similar. Finally, the level and quality of the alternative service must be similar to cellular. These factors must be considered in any discussion of competitive technology and substitute products and services.

PCS is not a viable competitor to cellular in any jurisdiction. The PCS spectrum auctions at the Commission are not yet complete, and the PCS infrastructure has not been constructed. Even if the PCS infrastructure could be constructed in Louisiana during the next several months, which is doubtful, the high cost of PCS handsets would present a barrier to

market entry, and the result will be a product that is not a substitute for cellular.⁷ Moreover, there is no evidence that PCS rates⁸ or geographic coverage will approach that attained by cellular systems in the foreseeable future.

SMRS also is not a viable substitute for cellular service, because it is a local service without broad geographic coverage and roaming capability, and it is not always interconnected into the local telephone switch. Therefore, it may be a substitute in certain specialized local markets, but it not the type of broad substitute that provides effective competition to cellular service for the purpose of ensuring reasonable rates.

ESMRS is not a viable competitor to cellular in Louisiana. ESMRS has the potential to be a substitute for cellular service, because it leverages off technology that is similar to cellular. It offers broader geographic coverage than SMRS, although it does not offer the same type of roaming capability as cellular. ESMRS may be a substitute for cellular service in Los Angeles and San Francisco through Nextel, but the ESMRS infrastructure is not in place in Louisiana. Moreover, it is doubtful that the presence of ESMRS in a few local markets could

7 The cost of electronics is, in part, directly related to the volume of production and the product maturity. Current cellular products are produced in high volume and are relatively mature, resulting in a lower cost. Products that are produced at lower volumes or that are relatively immature in their life-cycle, such as PCS products, are more expensive than cellular products. Moreover, PCS is a digital technology, whereas currently implemented cellular systems are based on analog technology. Although digital communications such as PCS offers more flexibility than current analog cellular systems, the analog cellular systems inherently will remain less expensive than digital systems for quite some time.

8 The prices paid at auction for PCS spectrum exceeded this Commission's forecasts. It is likely that these high initial costs will be amortized through higher rates, particularly in the near term.

provide the level of competition that would force cellular rates to become reasonable across Louisiana. (See Nextel Comments at 8-10.)

In the future, if CMRS alternatives create effective competition to cellular services in Louisiana, then it may be appropriate to reevaluate the competitive situation and reduce the level of regulation. Until that time, regulation is needed to protect Louisiana consumers, and to protect the CMRS providers that lack effective market power.

V. THE LPSC HAS REGULATED CMRS RATES PRIOR TO JUNE 1, 1993

In our original Petition, the LPSC detailed the manner in which it has regulated the rates charged and services rendered by cellular carriers operating in Louisiana. (See Petition at 6-23.) Of the 15 comments filed in response to that Petition, only Century alleges that the LPSC has not in fact engaged in rate regulation of the cellular carriers. The other parties either failed to comment or acknowledged that the LPSC was engaged in rate regulation. Specifically, the two largest cellular carriers in Louisiana, BellSouth and Radiofone, acknowledge that the LPSC does engage in rate regulation.⁹ (BellSouth at 20-21; Radiofone at 3-6.)

VI. THE LPSC IDENTIFIED THE RULES IT WILL USE IF THE PETITION IS GRANTED

A. The LPSC Proposes To Use Its Existing Rules If Its Petition Is Granted

If its Petition is granted, the LPSC will continue to use the rules that already are in place in Louisiana. Those rules are listed in the LPSC Petition on pages 48-49, in accordance

⁹ BellSouth is admittedly dissatisfied with that rate regulation but concedes that it exists in some form. Radiofone would like to see the LPSC continue its rate regulatory authority but does not want to see the LPSC engage in regulation on a rate base/rate of return basis.

with 47 C.F.R. § 20.13(b)(1), which incorporates § 20.13(a)(4).¹⁰ The LPSC explained in its Petition that it may propose changes to its existing rules based on results of an ongoing investigation of cellular providers in Louisiana. (Petition at 49-50.) The fact that the LPSC may propose changes in the future to its existing rules does not negate the fact that the LPSC has rules in place now, contrary to the assertions of some parties. (BellSouth at 16-17; PCIA at 14.)

B. The LPSC May Propose Changes To Its Rules Based On The Outcome Of An Ongoing Cellular Investigation In Louisiana

The LPSC has recently instituted an investigation into the manner in which cellular providers in Louisiana should be regulated. The LPSC may propose changes to its existing rules based on the results of its investigation. The other states that have submitted petitions in this proceeding do not contend that their proposed rules are set in stone and that their rules will not be altered based on new information or changing market conditions. As the Commission is aware, the manner in which public utilities and common carriers are regulated has evolved over time and that evolution is a dynamic process. Such changes are at the heart of this proceeding. The LPSC has rules in place now, and it should not be penalized for stating a concern, shared by all regulatory authorities, that the need may arise to change rules in the future.¹¹

10 The PCIA incorrectly stated that the LPSC failed to provide any specifics with regard to its present rules, and in citing to the LPSC Petition, it meticulously failed to include the page (p. 48) that contained the current LPSC rules. (See PCIA Comment at 14 n.33.)

11 The principal concern of the LPSC is that effective competition does not exist in Louisiana and therefore ratepayers will be left unprotected without continued regulation. (continued...)

VII. LOUISIANA CONSUMERS WILL NOT BE PROTECTED ADEQUATELY UNDER FEDERAL REGULATION

A. Consumers Will Not Be Protected From Unjust Or Discriminatory Rates

As discussed more fully in the original Petition, the virtual deregulation which will occur if the LPSC is not permitted to retain its jurisdiction, places Louisiana ratepayers at risk of being charged unjust, unreasonable and unduly discriminatory rates. There is no indication that the current duopoly system for cellular carriers protects consumers. Rather, it is likely that consumers are currently paying artificially high rates. The Commission and the Department of Justice agree that the cellular industry is not yet competitive. It may well be that when competition is more complete the need for regulation will decrease. However, that time has not yet come.

B. The Louisiana Commission Is Uniquely Experienced And Positioned To Handle Customer Complaints

The LPSC has handled customer complaints regarding cellular service since the industry's inception in Louisiana. Last year alone, approximately 320 complaints were received regarding cellular rates or services (*see* Affidavit of Carolyn DeVitis, LPSC Staff Attorney, attached to original Petition as Exhibit 11). This is understandable as Louisiana ratepayers would tend to contact local Louisiana authorities to resolve their problems. This would be true in any state. The Commission itself has referred customer complaints received from Louisiana cellular subscribers to the LPSC for resolution. The purpose of this discussion is not to fault the Commission for its failure to handle these complaints because it is not in a position to be

11(...continued)

It is likely that once effective competition does exist for cellular (or substitute) services, the LPSC would be more likely to decrease its role in regulating cellular carriers.

handling individual customer complaints from 50 states. Rather, this job should be left to the local regulator.

VIII. THE ATTEMPT TO PREEMPT THE AUTHORITY OF THE LOUISIANA COMMISSION TO REGULATE THE INTRASTATE CELLULAR SERVICE VIOLATES THE TENTH AMENDMENT

Any attempt by Congress and the FCC to preempt the authority of the LPSC to regulate the rates charged and services rendered by cellular providers is a violation of the Tenth Amendment of the United States Constitution. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution or prohibited to it by the states are reserved to the states respectively or to the people."

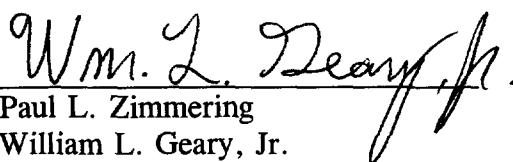
Regulation of intrastate cellular services by the LPSC is designed to protect Louisiana ratepayers from unjust, unreasonable and unduly discriminatory rates. It is also designed to protect the other members of the telecommunications industry from unfair competition. The ultimate goal is to ensure that reliable service is provided at a fair price. Such regulation of intrastate operations has traditionally been left to the states. Any preemption of that authority would result in an impermissible infringement upon the sovereignty of the state of Louisiana in violation of the Tenth Amendment.

IX. CONCLUSION

For the foregoing reasons, the Louisiana Public Service Commission respectfully requests that it be allowed to retain all of the authority it currently exercises over mobile carriers, including the authority to regulate the rates charged by commercial mobile radio service carriers in Louisiana.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William L. Geary, Jr., hereby certify that I have this 13th day of October, 1994, caused copies of the foregoing reply of the Louisiana Public Service Commission to be delivered via federal express or by first class U.S. mail, postage prepaid, as follows:

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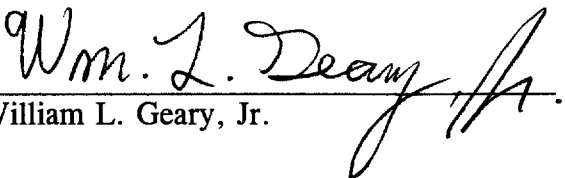
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